

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 8.2.2008
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Proposal for a

COUNCIL REGULATION

amending Regulation (EC) No 1210/2003 concerning certain specific restrictions on economic and financial relations with Iraq

(presented by the Commission)

EXPLANATORY MEMORANDUM

(1) Council Regulation (EC) No 1210/2003 imposed certain restrictive measures in respect of Iraq, in accordance with Common Position 2003/495/CFSP and UN Security Council Resolution 1483(2003). Regulation (EC) No 1210/2003 made specific arrangements concerning payments for Iraqi exports of petroleum, petroleum products, and natural gas, and concerning immunity from legal proceedings of certain Iraqi assets, in its Articles 2 and 10, respectively.

(2) By means of Resolution 1790 of 18 December 2007, the UN Security Council decided, inter alia, that these specific arrangements should apply until 31 December 2008 and stated its intention to review the specific arrangement concerning immunity from legal proceedings no later than 15 June 2008. It is appropriate to amend Regulation (EC) No 1210/2003 accordingly.

(3) It is also appropriate to align Regulation (EC) No 1210/2003 with recent developments in sanctions practice regarding the identification of competent authorities, liability for infringements and jurisdiction.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 60 and 301 thereof,

Having regard to Common Position 2008/…/CFSP amending Common Position 2003/495/CFSP on Iraq[1],

Having regard to the proposal from the Commission,

Whereas:

(1) In line with Resolution 1483(2003) of the UN Security Council, Article 2 of Regulation (EC) No 1210/2003 concerning certain specific restrictions on economic and financial relations with Iraq and repealing Regulation (EC) No 2465/96[2] made specific arrangements as regards payments for petroleum, petroleum products, and natural gas exported from Iraq, whereas Article 10 of that Regulation made specific arrangements concerning immunity from legal proceedings of certain Iraqi assets. The specific arrangement on immunities applied until 31 December 2007. The specific arrangement on payments continues to apply.

(2) Resolution 1790(2007) of the UN Security Council and Common Position 2008/…/CFSP provide that both specific arrangements should be applied until 31 December 2008. It is appropriate to amend Regulation (EC) No 1210/2003 accordingly.

(3) It is also appropriate to align Regulation (EC) No 1210/2003 with recent developments in sanctions practice regarding the identification of competent authorities, liability for infringements and jurisdiction. For the purpose of this Regulation, the territory of the Community is deemed to encompass the territories of the Member States to which the Treaty is applicable, under the conditions laid down in that Treaty.

(4) In order to ensure that the measures provided for in this Regulation are effective, this Regulation must enter into force immediately,

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1 OJ L … , … 2008, p. .. .

2 OJ L 169, 8.7.2003, p. 6. Regulation as last amended by Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1210/2003 is hereby amended as follows:

(1) Article 2 shall be replaced by the following:

"Article 2

All proceeds from all export sales of petroleum, petroleum products, and natural gas from Iraq, as listed in Annex I, as of 22 May 2003 shall be deposited into the Development Fund for Iraq under the conditions set out in UNSC Resolution 1483 (2003) and in particular paragraphs 20 and 21 thereof."

(2) The following Article 4a shall be inserted:

"Article 4a

The prohibition set out in Article 4(3) and 4(4) shall not give rise to liability of any kind on the part of the natural or legal persons or entities concerned, if they did not know, and had no reasonable cause to suspect, that their actions would infringe this prohibition."

(3) Article 6 shall be replaced by the following:

"Article 6

1. By way of derogation from Article 4, the competent authorities indicated in the websites listed in Annex V, may authorise the release of frozen funds or economic resources, if all of the following conditions are met:

   (a) the funds or economic resources are the subject of a judicial, administrative or arbitral lien established prior to 22 May 2003 or of a judicial, administrative or arbitral judgment rendered prior to that date;

   (b) the funds or economic resources will be used exclusively to satisfy claims secured by such a lien or recognised as valid in such a judgment, within the limits set by applicable laws and regulations governing the rights of persons having such claims;

   (c) satisfying the claim is not in breach of Regulation (EEC) No 3541/92; and

   (d) recognising the lien or judgment is not contrary to public policy in the Member State concerned.

2. In all other circumstances, funds, economic resources and proceeds of economic resources frozen pursuant to Article 4 shall only be unfrozen for the purpose of their transfer to the Development Fund for Iraq held by the Central Bank of Iraq, under the conditions set out in UNSC Resolution 1483 (2003)."

(4) Article 7 shall be replaced by the following:

"Article 7

1. The participation, knowingly and intentionally, in activities, the object or effect of which is, directly or indirectly, to circumvent Article 4 or to promote the transactions referred to in Articles 2 and 3, shall be prohibited.

2. Any information that the provisions of this Regulation are being, or have been, circumvented shall be notified to the competent authorities indicated in the websites listed in Annex V, and, directly or through these competent authorities, to the Commission."

(5) Article 8 shall be replaced by the following:

"Article 8

1. Without prejudice to the applicable rules concerning reporting, confidentiality and professional secrecy and to the provisions of Article 284 of the Treaty, natural and legal persons, entities and bodies shall:

   (a) provide immediately any information which would facilitate compliance with this Regulation, such as accounts and amounts frozen in accordance with Article 4, to the competent authorities indicated in the websites listed in Annex V, in the Member State where they are resident or located, and, directly or through these competent authorities, to the Commission;

   (b) cooperate with the competent authorities indicated in the websites listed in Annex V, in any verification of this information.

2. Any information provided or received in accordance with this Article shall be used only for the purposes for which it was provided or received."

(6) The following Article 15a shall be inserted:

"Article 15a

1. Member States shall designate the competent authorities referred to in Articles 6, 7 and 8 of this Regulation and identify them in, or through, the websites listed in Annex V.

2. Member States shall notify the Commission of their competent authorities before 15 March 2008 and shall notify it of any subsequent changes."

(7) Article 16 shall be replaced by the following:

"Article 16

This Regulation shall apply:

(a) within the territory of the Community, including its airspace;

(b) on board any aircraft or any vessel under the jurisdiction of a Member State;

(c) to any person inside or outside the territory of the Community who is a national of a Member State;

(d) to any legal person, entity or body which is incorporated or constituted under the law of a Member State; and

(e) to any legal person, entity or body in respect of any business done in whole or in part within the Community."

(8) In Article 18, paragraph 3, shall be replaced by the following:

"3. Articles 2 and 10 shall apply until 31 December 2008."

(9) Annex V shall be replaced by the text given in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Council
The President

ANNEX

"ANNEX V

Websites for information on the competent authorities referred to in Articles 6, 7 and 8 and address for notifications to the European Commission

A. Websites for information on competent authorities

(to be completed by Member States)

BELGIUM

BULGARIA

CZECH REPUBLIC

DENMARK

GERMANY

ESTONIA

IRELAND

GREECE

SPAIN

FRANCE

ITALY

CYPRUS

LATVIA

LITHUANIA

LUXEMBOURG

HUNGARY

MALTA

NETHERLANDS

AUSTRIA

POLAND

PORTUGAL

ROMANIA

SLOVENIA

SLOVAKIA

FINLAND

SWEDEN

UNITED KINGDOM

B. Address for notifications to the European Commission:

Commission of the European Communities

Directorate-General for External Relations

Directorate A. Crisis Platform and Policy Coordination in Common Foreign and Security Policy

Unit A.2. Crisis Management and Peace Building

CHAR 12/106

B-1049 Brussels

Tel. (32-2) 295 5585

Fax (32-2) 299 0873."